

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: FRESENIUS GRANUFLO/
NAUTRALYTE DIALYSATE PRODUCTS)
LIABILITY LITIGATION) MDL No. 13-2428-DPW
)

MEMORANDUM AND ORDER
REGARDING AWARD AND ALLOCATION OF
COMMON BENEFIT FEES
February 1, 2018

After a duly noticed hearing on January 30, 2018 and careful consideration of the submissions in connection with the petition by the Plaintiff Leadership of the coordinated MDL and Massachusetts state court proceedings for the award and allocation of common benefit fees [Dkt. No. 1982], to which no opposition was presented – despite an extended period within which to do so – I find as follows:

Given the status of the litigation, with the global settlement consummated and fully funded, all but a modest set aside of common benefit expenses reimbursed pursuant to my Order [Dkt. No. 1978] of November 2, 2017, settlement claims being processed, dismissals being entered for all but a handful of the cases that did not opt in to the settlement, and the entry of CMO 18 [Dkt. No. 1926] (limiting the need for and role of the PEC going forward), the time is ripe to address the award and allocation of common benefit fees.

- A -

I have reviewed the Plaintiff Leadership's moving papers and submissions with respect to the petition, including the Affidavit of the Court-appointed accountant (Phillip A. Garrett, C.P.A.) and Plaintiff Leadership's unanimous recommended allocation of any awarded common benefit fees. I accept the representations in the moving papers and further find that:

1. The Plaintiffs' Leadership has well and properly performed its duties in managing, litigating and bringing to a fair resolution this complex state-federal coordinated litigation.
2. The nature and volume of work and total hours applied towards the common benefit of all plaintiffs appears reasonable and in compliance with CMO 14 (Revised) [Dkt. No. 928].
3. The allocation of percentages of the overall available common benefit fees to each of the common benefit law firms also appears reasonable, and I find no basis to decline to defer and otherwise be guided by the recommendations of the Plaintiffs' Leadership, especially given: (a) the unanimous agreement and recommendation of the Common Benefit Fee Committee; (b) the overwhelming support by the common benefit law firms, as represented in the Plaintiff

Leadership's moving papers; and (c) the lack of any opposition to the petition by any party.

ACCORDINGLY, I hereby ALLOW the Plaintiff Leadership's petition [Dkt. No. 1982].

- B -

Pursuant to my ALLOWANCE of Plaintiff Leadership's petition, it is ORDERED that:

1. The entirety of the funds remaining available from the settlement for common benefit time (\$15,870,491.01) shall be awarded as common benefit fees.
2. The allocation of common benefit fees shall be made in the percentages recommended in the fourth column of **Exhibit 1** [Dkt. No. 1893-1] to the Plaintiff Leadership's moving papers.
3. Pursuant to my Order dated October 22, 2016 [Dkt. No. 1788], Providio MediSolutions, LLC ("Providio"), having been appointed the Qualified Settlement Fund Administrator and been ordered among other things (a) to create and oversee the GranuFlo/NaturaLyte Qualified Settlement Fund (the "QSF"); (b) to create a sub account within the QSF for GranuFlo/NaturaLyte Common Benefit Fund (the "Common Benefit Sub Account"), into which \$27,500,000.00 of the QSF total funds (11% of the \$250 Million gross settlement, the court-allowed common benefit assessment as set forth in CMO

No. 14) (Revised) [Dkt. No. 928]); and (c) to distribute common benefit funds only in accordance with orders of court, Providio is authorized to distribute the common benefit fees awarded by this Order, subject to Section B.4 *infra*.

4. Providio shall not distribute the common benefit fees until after it has mailed or wired the settlement awards to all claimants' counsel.

/s/ Douglas P. Woodlock _____
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE